

FILED

APR - 9 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Clerk, U.S. District and
Bankruptcy Courts

FPL GROUP, INC.,
700 Universe Blvd.
Juno Beach, FL 33408,

Plaintiff,

v.

INTERNAL REVENUE SERVICE,
1111 Constitution Avenue, N.W.
Washington, DC 20224,

Defendant

Case: 1:09-cv-00652

Assigned To : Huvelle, Ellen S.

Assign. Date : 4/9/2009

Description: Admin. Agency Review

COMPLAINT

Plaintiff brings this action for disclosure of information against Defendant, an agency of the United States, and for its complaint alleges as follows:

1. Plaintiff is incorporated in the State of Florida and has its principal place of business located in Juno Beach, Florida.
2. Plaintiff is the parent corporation of an affiliated group of corporations, including Florida Power & Light Co., a public utility doing business in the State of Florida that is a member of Plaintiff's consolidated group for purposes of filing Federal income tax returns.

3. Defendant is the Internal Revenue Service (herein "IRS"), an agency of the United States, with its headquarters in Washington, DC, in this judicial district.

4. This is an action for disclosure of information pursuant to the Freedom of Information Act, 5 U.S.C., Section 552 (herein "FOIA") and also for "Chief Counsel Advice" and other written determinations, including related background file documents, pursuant to Section 6110 of the Internal Revenue Code of 1986, as amended (26 U.S.C.) (herein "the Code"). Defendant has unlawfully withheld from Plaintiff these documents, which are required to be produced pursuant to Section 6110 of the Code (Counts I and II below), and pursuant to FOIA (Count III below), as set forth and described more fully below.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 5 U.S.C, Section 552(a)(4)(B); 26 U.S.C., Section 6110(f)(4); and 28 U.S.C., Section 1331.

6. Venue in this Court is proper pursuant to the provisions of 26 U.S.C., Section 6110(f)(4)(A); 28 U.S.C., Section 1391(e); and 5 U.S.C., Section 552(a)(4)(B).

COUNT I

FIRST REQUEST UNDER SECTION 6110 OF THE CODE

7. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1-6 above.

8. On April 7, 2008, Plaintiff requested in writing that Defendant furnish to it copies of "background file documents" (as defined in Section 6110(b)(2)) of the Code) (the "First 6110 Request") related to PLR 199903030 and AM 2006-006, and any other written determinations, including "Chief Counsel Advice" (as defined in Section 6110(i)(1) of the Code), related to either PLR 199903030 or AM 2006-006. A copy of the First 6110 Request describing the written determinations and background file documents in issue in this Count I is attached hereto as Exhibit A, which is incorporated herein by reference.

9. Plaintiff's First 6110 Request for written determinations, including Chief Counsel Advice documents and related background file documents, complied with the requirements of Section 6110 of the Code and the Regulations thereunder.

10. Defendant responded to Plaintiff's First 6110 Request by letter dated September 3, 2008, stating that the background file documents to PLR 199903030 were destroyed pursuant to section 6110(k)(2) of the Code. Defendant failed to specify what reasonable search was made for copies of the documents either (a) in the files related to the Proposed Regulations on the same topic, or (b) other files that were likely to contain such copies, and therefore did not constitute a complete response to the portion of the First 6110 Request related to such documents.

11. Defendant further responded to the First 6110 Request by letter dated January 15, 2009, stating that documents described in that request related to AM 2006-006 had been located, were determined to be subject to production under FOIA, and would be released to the "HQ Disclosure Office" by January 23, 2009.

12. Plaintiff received a further response from Defendant dated February 9, 2009 with respect to the First 6110 Request. This response stated that Defendant had located 375 documents that were responsive to the First 6110 Request, but was withholding 299 documents in full and 37 documents in part. The documents provided in part contained substantial redactions, so that no meaningful information was provided.

13. Defendant claimed blanket and non-specific privileges with respect to the redacted documents referenced in the preceding paragraph, allegedly pursuant to Section (b)(5) of FOIA, without factual elaboration. No privilege log or "Vaughn Index" was provided with the February 9 response. No other responses were received by Plaintiff with respect to the First 6110 Request.

14. Defendant's attempt to convert the First 6110 Request into a FOIA request is invalid, and results in Defendant claiming privileges applicable to FOIA but not applicable to background file documents related to Chief Counsel Advice under Section 6110(i).

15. Defendant's blanket claims of privilege to the documents identified pursuant to the First 6110 Request, without specifying the privilege claimed or factual basis in support of the claimed privileges, are illegal, void, and without effect.

16. On March 2, 2009, Plaintiff filed a timely administrative appeal to the denial of production in whole or in part of documents requested in the First 6110

Request. A copy of this administrative appeal is attached hereto as Exhibit B and incorporated herein by reference. Although more than 20 days have elapsed since the filing of this administrative appeal, Defendant has taken no action on such appeal.

17. As of the date of the filing of this complaint, Defendant has failed to provide the requested information, or to provide satisfactory reasons for non-production, as required by Section 6110 of the Code. Defendant has also failed to show that it has made a reasonable and diligent search for the documents described in the First 6110 Request.

18. In view of the foregoing, Defendant has failed to perform its statutory duty to comply with the requirements of Section 6110(g) and (i) of the Code and to locate and release the documents described in Exhibit A hereto.

19. Plaintiff has exhausted its administrative remedies. Plaintiff is deemed to have exhausted its administrative remedies because Defendant has failed to affirmatively allow the First 6110 Request within 180 days of the filing of Plaintiff's request as required by Treasury Regulations § 301.6110-5(d)(3)(i). Defendant has also failed to respond to the administrative appeal filed by Plaintiff, to the extent that the First 6110 Request is treated as a FOIA request as asserted by Defendant. Accordingly, Defendant should be ordered to locate and to release the requested documents forthwith to Plaintiff.

COUNT II

SECOND REQUEST UNDER SECTION 6110 OF THE CODE

20. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1-6 above.

21. On April 8, 2008, Plaintiff requested in writing (the "Second 6110 Request") that Defendant furnish to it copies of certain described "Chief Counsel Advice" written determinations, as defined in Section 6110(i)(1) of the Code. A copy of the written request describing the written determinations in issue is attached hereto as Exhibit C, which is incorporated herein by reference.

22. Plaintiff's Second 6110 Request also requested, pursuant to Section 6110(e) of the Code, any emails or telephone notes that would constitute "background file documents" related to the subject Chief Counsel Advice documents as defined in Section 6110(b)(2) of the Code.

23. Although Defendant is required, pursuant to Section 6110(g) of the Code, to make such written determinations available, without request, no later than 90 days after issuance of a notice of intention to disclose, Defendant has failed to issue the notice of intention to disclose or to make the described written determinations available as required by Section 6110.

24. Plaintiff's request for Chief Counsel Advice documents and related background file documents complied with the requirements of Section 6110 of the Code and the Regulations thereunder.

25. Defendant responded to Plaintiff's Second 6110 Request by letter dated July 31, 2008. Defendant's "response" of July 31 referred Plaintiff to public sources (which did not contain the documents requested) and stated, in essence, that Defendant "has committed significant resources" to comply with this Court's orders in an unrelated case (Tax Analysts v. IRS, Docket No.CIV. A. 05-0934 (D.D.C.) HVVELLE) and was "unable to divert its attention from this effort" in order to comply with Plaintiff's request. The July 31 "response" therefore provided none of he requested documents, and suggested that no response to Plaintiff's Second 6110 Request would be forthcoming until the resolution of the Tax Analysts case.

26. Petitioner responded to Defendant's letter of July 31, 2008 in a letter dated August 25, 2008, stating that Defendant's "response" was unacceptable and would be considered as a denial of the pending Second 6110 Request unless a response that complied with Section 6110 of the Code was received within ten (10) days.

27. Defendant did not respond to Plaintiff's request for reconsideration of Defendant's refusal to search for the requested documents.

28. As of the date of the filing of this complaint, Defendant has failed to provide the requested information, or to provide satisfactory reasons for non-production, as required by Section 6110 of the Code.

29. In view of the foregoing, Defendant has failed to perform its statutory duty to comply with the requirements of Section 6110(g) of the Code and to locate and release the documents described in Exhibit B hereto.

30. Plaintiff has exhausted its administrative remedies, since Defendant has effectively denied the request pursuant to Defendant's response letter dated July 31, 2008

referred to in paragraph 25 above. Alternatively, Plaintiff is deemed to have exhausted its administrative remedies because Defendant has failed to affirmatively allow the request within 180 days of the filing of Plaintiff's request as required by Treasury Regulations § 301.6110-5(d)(3)(i). Accordingly, Defendant should be ordered to release the requested documents forthwith to Plaintiff.

COUNT III

REQUEST UNDER FREEDOM OF INFORMATION ACT

31. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1-6 above.

32. On April 7, 2008, Plaintiff filed a request under FOIA (herein "FOIA Request") with various offices of Defendant, including its National Office, seeking documents containing information pertaining to IRS audit determinations with respect to Plaintiff's regulated electric utility subsidiary, Florida Power & Light Company. The FOIA Request specifically sought documents related to the method of accounting for expenditures made to repair Florida Power & Light Company's electric generation equipment, which Plaintiff is entitled to receive as the Parent corporation of the FPL Group, Inc. consolidated return of which Florida Power & Light Company is a member. The FOIA Request also sought other documents subject to production under FOIA as described therein. A copy of the FOIA Request is attached hereto as Exhibit D, which is incorporated herein by reference.

33. Plaintiff filed the FOIA Request with the IRS FOIA disclosure offices in Chicago, IL; Cincinnati, OH; and Jacksonville, FL, in addition to the IRS National Office, each of which was believed to have possession, custody, control, or knowledge of the requested documents and information. Plaintiff was subsequently informed by letter dated April 22, 2008 from Defendant that the subject FOIA requests would be handled by its National Office.

34. Defendant was required by FOIA (Section (a)(6)(A)) to respond within 20 business days to Plaintiff's FOIA Request, i.e., on or before May 7, 2008. On April 30, 2008, Plaintiff received a letter from Defendant's "HQ Disclosure Office" invoking the 10-day statutory extension of time for response pursuant to Section (a)(6)(B)(i) of FOIA, to and including May 21, 2008. Although this provision requires that Defendant set forth "the unusual circumstances for such extension", no such unusual circumstances were included. The notice instead stated only that "I need additional time to search for, collect, and review responsive records from other locations." Since this notice failed to specify "unusual circumstances" as required by the statute, it is invalid and does not extend the statutory response date of May 7, 2008.

35. In addition, Defendant's letter dated April 30, 2008, as referenced in the preceding paragraph, requested additional time to August 15, 2008, in which to respond to Plaintiff's request, and stated that Plaintiff may file suit in the U.S. District Court if it did not agree with the additional extension request. Plaintiff responded by letter dated May 9, 2008, in which Plaintiff notified Defendant that it did not agree to the requested additional extension to August 15 since no unusual circumstances, or any factual reasons, were given as required by the statute.

36. In a telephone conversation on May 14, 2008 with Defendant's disclosure agent assigned to this matter, Plaintiff agreed to extend the time for response to July 9, 2008, based upon the representation of Defendant's agent that the requested materials had been obtained and that production could be accomplished by the agreed date. Plaintiff confirmed this telephone conversation by letter dated May 15, 2008.

37. By letters dated August 8 and 13, 2008, Defendant forwarded copies of some, but not all, of the documents within the scope of Plaintiff's request. With the exception of two affidavits described in Item 4 of the FOIA Request, all of such documents were known to Defendant as already being in the possession of Plaintiff, namely, (1) four Tax Court opinions, two of which involved Plaintiff and the Commissioner of Internal Revenue, (2) pleadings filed by Plaintiff in Tax Court litigation with the Commissioner of Internal Revenue, and (3) documents having been previously furnished to Plaintiff by Defendant in connection with litigation in the Tax Court.

38. Defendant's partial response to Plaintiff's FOIA Request was incomplete, but Petitioner was informed that additional information would be provided in the future. Plaintiff did not agree with the request in the partial response, and subsequent oral requests, for additional time in which to comply with the FOIA Request or otherwise respond. No additional documents described in this FOIA Request have been provided, nor has production been denied, as of the date of filing of this complaint.

39. The letter of January 15, 2009 referred to in Paragraph 11 above also requested an extension of time to April 14, 2009, with respect to Item 7 of the FOIA Request. Plaintiff denied this request by letter dated January 30, 2009, because the time for compliance pursuant to prior extensions had expired on July 9, 2008.

40. Plaintiff has exhausted its administrative remedies as required by FOIA because Defendant was required to furnish all documents no later than July 9, 2008, and such compliance has not yet occurred. Although no denial of the FOIA Request has been made, Plaintiff appealed, by letter dated March 2, 2009, the failure of Defendant to conduct a reasonable and diligent search for the requested documents and to provide such documents within the periods required by law, as extended by Plaintiff to July 9, 2008.

41. Defendant has neither responded to the administrative appeal within the 20 business days allowed by law, nor given any reason for its failure to produce the requested documents, its failure to otherwise respond to the FOIA Request, or its disregard of statutory deadlines.

42. Defendant should therefore be ordered to conduct a reasonable search, to specify the efforts made to locate responsive documents, and to furnish to Plaintiff forthwith all documents described in the FOIA Request, Exhibit D hereto.

43. In addition, because the requested documents and records were wrongfully withheld, Defendant should be assessed, pursuant to Section (a)(4)(E) of FOIA, Plaintiff's reasonable litigation costs, including attorney's fees, incurred in pursuing this action.

WHEREFORE, PLAINTIFF PRAYS:

1. That Defendant be enjoined, pursuant to Count I herein, from further violation of the requirements of Section 6110 of the Code and be ordered to produce the written determinations, including Chief Counsel Advice memoranda, and background file

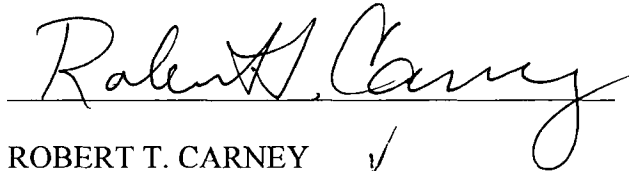
documents, as requested and described in Exhibit A hereto, forthwith and without further delay;

2. That Defendant be enjoined, pursuant to Count II herein, from further violation of the requirements of Section 6110 of the Code and be ordered to produce the Chief Counsel Advice memoranda documents, as requested and described in Exhibit C hereto, forthwith and without further delay;

3. That Defendant be enjoined, pursuant to Count III herein, from continuing to withhold, and ordered to produce forthwith, the documents described in Plaintiff's FOIA request, Exhibit D hereto;

4. That the Court determine that Plaintiff has substantially prevailed on Count III in this action and is entitled to recover, pursuant to Section (a)(4)(E) of FOIA, its reasonable litigation costs, including attorney fees, incurred in pursuing this action; and,

5. That the Court grant such other and further relief as the Court deems just.

A handwritten signature in cursive script, reading "Robert T. Carney", written over a horizontal line.

ROBERT T. CARNEY ✓
Florida Power & Light Co.
Suite 220
801 Pennsylvania Ave., N.W.
Washington, DC 20004
202-349-3344
Bar No. 187989

Dated: April 9, 2009

Attorney for Plaintiff



Florida Power & Light Company, 801 Pennsylvania Avenue, N.W., Suite 220, Washington, D.C. 20004-2604
Telephone: (202) 347-7082, Fax: (202) 347-7076

April 7, 2008

VIA COURIER AND CERTIFIED MAIL

National Office Reading Room
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC

Dear Sir or Madam :

Pursuant to Section 6110 of the Internal Revenue Code, as amended, and the Regulations thereunder (e.g., § 301.6110-1(b)(1) and (c)(4)), the undersigned requests, on behalf of FPL Group, Inc. ("Requestor"), any and all "background file documents" (within the meaning of Section 6110(b)(2) of the Code and Regulations § 301.6110-2(g) related to the preparation and issuance of written determinations designated as PLR 199903030 and AM 2006-006, or other written determination (including Chief Counsel Advice (as defined in Section 6110(i)(1) and (2)) which relates to either of those written determinations, including, but not limited to, any emails or telephone conference notes made in connection with such written determination.

In accordance with Regulations § 301.6110-1(c)(4), the undersigned Requestor authorizes and agrees to pay your standard charges for searching and coping the documents requested herein, up to a maximum of \$500. It is further requested that you contact the undersigned officer of Requestor at the telephone number indicated for authorization of additional charges in excess of that amount.

Pursuant to Regulations § 301.6110-1(c)(4)(vii), you are requested to send the requested documents by regular mail to the undersigned at the address set forth above.

Sincerely yours,

James P. Higgins
Vice President, Tax
FPL Group, Inc.

EXHIBIT A



FPL Group, Inc., P. O. Box 14000, Juno Beach, Florida 33408-0420

March 2, 2009

BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Commissioner of Internal Revenue
Internal Revenue Service Appeals
Attention: FOIA Appeals
M/Stop 55203
5045 E. Butler Ave.
Fresno, California 93727-5136

Re: Administrative Appeal from Denial of Freedom of Information Act Request

This is an appeal made under the Freedom of Information Act, 5 USC § 552(a)(6) ("FOIA") and the Regulations thereunder (§ 601.701 et seq.), and § 6110 of the Code, from a denial of information requested from the Internal Revenue Service (the "Service") on behalf of FPL Group, Inc. (the "Taxpayer" or "FPL"). The Taxpayer submitted a FOIA request ("FOIA Request") and a request under § 6110 for background file documents (the "6110 Request") to the Internal Revenue Service by letters dated April 7, 2008. Copies of the Taxpayer's FOIA Request and 6110 Request (without attachments) are attached as Exhibit 1 and Exhibit 2, respectively. The time for response to the 6110 Request expired on October 5, 2008.

The 6110 Request requested documents that were unrelated to the documents described in the FOIA Request. By letter dated January 15, 2009, the Service stated that it would treat the 6110 Request as a request under FOIA. FPL does not agree with the Service's treatment of the 6110 Request under FOIA but is filing this appeal in the event that the Service's position regarding the applicability of FOIA is sustained. The FOIA Request and the 6110 Request each reasonably described the records requested to which this appeal pertains.

The 6110 Request (being treated as a FOIA request, as noted above) was denied, in part, by the Internal Revenue Service's Maryland Disclosure Office by letter dated February 9, 2009 (the "Denial Letter"). The Denial Letter was, in part, responsive to the 6110 Request background file documents relating to AM 2006-006 that are in issue. The Denial Letter also stated that the Service was continuing to work on the remainder of the separate FOIA request (Exhibit 1), to which a partial response had been given on August 8 and 13, 2008 (although FPL has not agreed to extensions of time beyond July 9, 2008 in which to comply with the FOIA Request). The IRS stated in the Denial Letter that 375 pages had been located that related to the background file documents relating to AM 2006-006. However, the IRS also stated in the Denial Letter that 299 documents were being withheld because one of the following FOIA exemptions applied: FOIA sections (b)(3), (5), and (6).

As to the remaining 76 documents provided with the Denial Letter, the following emails were being withheld in part under FOIA Section (b)(5):

From	Date	Subject
Irving, Andrew	June 13, 2006 4:46 PM	Slow losses
Irving, Andrew	September 26, 2006 7:28 PM	Post-Casualty Repairs GLA rewrite
Irving, Andrew	September 21, 2006 6:55 PM	Post-Casualty Repairs
Irving, Andrew	September 19, 2006 3:04 PM	Re: Generic Legal Advice: Cost of Restoring property after casualty loss (POSTS-119766-06)
Irving, Andrew	September 14, 2006 4:48 PM	Generic Legal Advice: Cost of Restoring property after casualty loss (POSTS-119766-06)
Irving, Andrew	September 8, 2006 6:13 PM	Post-casualty repairs
Irving, Andrew	September 12, 2006 12:54 PM	Re: "Reliance Guidance"
Irving, Andrew	September 6, 2006 1:23 PM	Re: Post-Casualty repairs
Koch, Kimberly L	September 6, 2006 12:17 PM	Re: Post-Casualty repairs
Irving, Andrew	September 7, 2006 2:31 PM	Re: Post-Casualty repairs
Koch, Kimberly L	September 7, 2006 2:08 PM	Re: Post-Casualty repairs
Irving, Andrew	September 6, 2006 3:06 PM	Re: Post-Casualty repairs
Irving, Andrew	September 7, 2006 1:44 PM	Re: Casualty Repairs/Clear Reflection
Osborne, Martin	August 30, 2006 11:26 AM	Re: Post-Casualty repairs
Irving, Andrew	August 29, 2006 2:28 PM	Post-Casualty repairs
Irving, Andrew	August 29, 2006 2:15 PM	FW: Post-Casualty repairs
Irving, Andrew	August 29, 2006 2:13 PM	Re: Post-Casualty repairs
Shapiro, Marc A	April 26, 2006 10:20 AM	Request for Chief Counsel Advice; Casualty Losses
Amy S. Wei	July 10, 2006 4:34 PM	Casualty Losses

Amy S. Wei	June 21, 2006 4:45 PM	Re: Research Update: Casualty losses
Irving, Andrew	June 19, 2006 1:30 PM	FW: Research update: Casualty losses
Irving, Andrew	April 26, 2006 11:45 AM	Re: Request for Chief Counsel Advice; Casualty Losses

As to PLR 1999903030, the Denial Letter referred FPL to the IRS's letter dated September 3, 2008, which stated that the background file documents were presumed destroyed under the IRS's policy of three year retention. The Denial Letter further stated that the IRS was still considering and searching for documents relating to tax accounting method issues for repair expenses v. capitalization as requested in the FOIA letter. See Exhibit 1, FOIA Request dated April 7, 2008.

Pursuant to 26 C.F.R. § 601.702(c)(10), this administrative appeal is timely submitted within 35 days after the Denial Letter dated February 9, 2009.

FPL requests that the Commissioner grant its FOIA Request and 6110 Request in full, and provide copies of all records requested. To the extent the Commissioner continues to withhold any records responsive to either the FOIA Request or the 6110 Request, FPL requests that the Commissioner provide for each record withheld a description of that record and the basis for withholding that record. FPL further requests that the Commissioner verify that an appropriate search was conducted, giving the details of the search(es) and stating that all documents responsive to the FOIA Request and 6110 Request were either produced or withheld pursuant to an appropriate exemption claim.

The specific grounds for the relief sought in this appeal are as follows:

1. The documents requested in the 6110 Request (Exhibit 2) should be treated as background file documents to a Chief Counsel Advice under Section 6110 of the Code. Such documents are not subject to the privileges claimed under FOIA (see Section 6110(i)(3), which does not provide such exemptions for background file documents to Chief Counsel Advice).
2. Assuming the privileges available under FOIA apply to the documents in issue, the Denial Letter fails to describe the documents and/or relevant portions of the documents that are being withheld. See Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973); Coastal States Gas Corporation v. Department of Energy, 617 F.2d 854 (D.C. Cir. 1980).
3. As to the withheld documents and/or relevant portions of the documents that are being withheld under claims of privilege, the Denial Letter fails to identify the specific privilege that is alleged to apply, and on what basis the privilege might apply. Such information must be provided. See Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973); Coastal States Gas Corporation v. Department of Energy, 617 F.2d 854 (D.C. Cir. 1980). The Denial Letter also gives no factual basis for any of the privileges asserted in the Denial Letter. A blanket reference to "(b)(5)" of FOIA is facially insufficient.

4. It appears that the Denial Letter is a form letter bearing no relationship to the documents provided. Withheld documents, or redactions, must be specifically identified and justified.

5. The IRS's blanket withholding of documents based on unspecified claims of privilege is in direct violation of President Obama's recent order providing that agencies should adopt a presumption in favor of disclosure, and justify withholding documents or information only where there is actual harm to the Government.

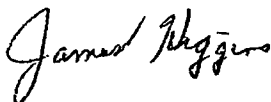
6. The document entitled "Checklist for Processing NonTaxpayer Specific CCA" states as to item 5 the following: "N/A" in response to "Has a memo to the file been prepared and placed in the official case file identifying the specific privilege being claimed, if any, and describing the harm which would result from disclosure of the privileged matter?" The Checklist was signed and dated by Amy Wei and Arlen Blum on October 3, 2006. Another Checklist with item 5 was once again signed by Amy Wei and Arlen Blum on October 12, 2006. Accordingly, at the time of the preparation of the AM 2006-006, the IRS did not identify, let alone believe a privilege under FOIA Exemption (b)(3), (5), or (6) was applicable with respect to any of the documents in issue. To raise post-hoc an allegation of privilege is in violation of judicial privilege.

Furthermore, pages 56 – 58, 60 – 63, 68 were not provided and no FOIA exemption was claimed as to these missing pages.

A reply is requested within 20 working days as prescribed under 5 USC § 552(a)(6)(A)(ii) and 26 C.F.R. § 601.702(c)(10)(iii). The determination on appeal should be sent to Attn: James P. Higgins FPL Group, Inc. P.O. Box 1400 Juno Beach, Fl. 33408.

Should you have any questions, please contact me at (561) 691-7600.

Sincerely,

A handwritten signature in cursive script that reads "James P. Higgins".

James P. Higgins
Vice President, Tax

Enclosures

EXHIBIT 1



Florida Power & Light Company, 801 Pennsylvania Avenue, N.W., Suite 220, Washington, D.C. 20004-2604
Telephone: (202) 347-7082, Fax: (202) 347-7078

April 7, 2008

IRS FOIA Request
Jacksonville Disclosure Office
MS 4030
400 W. Bay Street
Jacksonville, FL 32202-4437

National Office Reading Room
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

IRS FOIA Request
Chicago Disclosure Office
Mail Stop 7000 CHI, Room 2820
230 S. Dearborn Street
Chicago, IL 60604

IRS FOIA Request
Cincinnati Disclosure Office, RM 7019
550 Main Street
Cincinnati, OH 45202

Re: Freedom of Information Act Request—Files related to tax accounting method issues for repair expense vs. capitalization of FPL Group, Inc.

Dear Sir or Madam:

Pursuant to Section 552 of Title 5, U.S.C., and the regulations thereunder (Section 601.702, *et seq.*), the undersigned FPL Group, Inc., and its wholly-owned subsidiary Florida Power & Light, Inc. ("FPL"), request the production of copies of all records described below.

We believe that the records meeting the descriptions below will likely be located in the following offices or with these individuals who have worked on the issues related to FPL:

- The Industry Specialization Program group for the Utility Industry, located in Akron, Ohio. (Frank Genet, Utility Technical Advisor);
- The offices of Area Counsel and Associate Area Counsel, Chicago, Illinois (James Lanning and William Merkle);
- The offices of the District Counsel, Miami, Florida (Sergio Garcia-Pages);
- The offices of the District Counsel, Jacksonville, Florida (Ben DeLuna); and
- The offices of the Associate Chief Counsel (LMSB).
- The Internal Revenue Service National Office

Because the responsibility for controlling the records described may be within the purview of officials in Jacksonville, Chicago, and/or Akron, we are sending this FOIA



FPL

Florida Power & Light Company, 801 Pennsylvania Avenue, N.W., Suite 220, Washington, D.C. 20004-2604
Telephone: (202) 347-7082, Fax: (202) 347-7076

request to each of the Disclosure Offices responsible for each particular area of the country in order to expedite this request. We expect that each recipient of the request will provide all responsive documents or records that are within his possession, custody, or control or to which he has a right to access. In addition, this list is intended to be helpful, but not exclusive. This request should be forwarded to any other persons or offices having relevant information that are known to any of the responders.

If this FOIA request is consolidated under the supervision of a particular Disclosure Office or Officer, please inform me so that coordination and communication may be simplified.

The term "documents" as used herein includes all written materials, including emails and summaries of telephone conversations, whether in paper or electronic format.

Requested Records under FOIA:

1. Documents related specifically to the reasons for, or factual considerations in connection with, the determination of Donald Williamson in determining not to allow FPL's protective request, dated April 10, 2001, for a change in method of accounting for items of repair expense. FPL submitted this protective request to Mr. Williamson in his capacity as Associate Area Counsel (Strategic Litigation), in Atlanta, Georgia, while he was in charge of the litigation of FPL's 1988-1992 taxable years. We believe these files may be currently in the possession of William Merkle or Larry Letkewicz of the office of Associate Area Counsel (Strategic Litigation) in Chicago, Illinois.
2. Any and all directives to Revenue Agents (whether direct or indirect) regarding the disallowance of deductions for repair expenses in excess of the amounts claimed for financial accounting purposes claimed on FPL's consolidated tax returns.
3. Any documents related to a final decision or basis for the final decision not to allow FPL's requested protective change in the method of accounting with respect to items of repair expense filed in 2001, including the background files supporting the decision.
4. The affidavits of Sara Northard and Donald Williamson, which may be in the possession of William Merkle, Associate Area Counsel, Chicago, Illinois (and/or Lawrence Letkewicz of the same office), along with any other files of factual background relating to the affidavits. Mr. Williamson describes and references the affidavits in a letter dated May 30, 2002. A copy of his letter is attached to this Request.
5. The statement of final decision and the background files supporting that decision with respect to the "Industry Issue Resolution" ("IIR") process for the repair



Florida Power & Light Company, 801 Pennsylvania Avenue, N.W., Suite 220, Washington, D.C. 20004-2604
Telephone: (202) 347-7082, Fax: (202) 347-7076

expense vs. capitalization issue (your ref: RR-108668-03), titled "Costs of Maintaining and Improving Power Generating Assets." This Request includes any studies or analyses performed by employees of the IRS or outside contractors on behalf of the IRS.

6. Any documents submitted by members of the electric utility industry participating in the IIR process on the repair expense vs. capitalization issue described above.
7. All documents and records related to the promulgation of Proposed Regulation 168745-03 (originally promulgated August 18, 2006 and published in the August 21, 2006 issue of the Federal Register (71 FR 161) and the September 25, 2006 issue of the Internal Revenue Bulletin (2006-39 I.R.B. 532); withdrawn and repromulgated as proposed regulations on March 7, 2008) regarding the capitalization of repair expense, including statements and background file documents as to why the use of "retirement units" (as defined by the Federal Energy Regulatory Commission) as a basis for determining deductible repair expenses in the utility industry will clearly reflect income.
8. All documents containing the results of any studies or analyses by representatives of the Internal Revenue Service or outside contractors employed by the IRS in this regard. This includes, but is not limited to, materials in the Expert Witness Library of the Internal Revenue Service.

Requester states that its undersigned officer is entitled to review such documents under the provisions of 26 U.S.C. Section 6103 and requests that he be entitled to inspect copies of the documents requested herein prior to copying, pursuant to Section 601.702(c)(4)(i)(G) of the regulations. Notification of any determination made on this request, including the requested documents, should be sent to the undersigned requester at the above address. If any requested documents are not being provided, please provide an itemized *Vaughn* index of any and all withheld documents and the basis for each withholding.

We are aware that the Internal Revenue Service has a destruction policy for documents of a certain age, and we therefore request that appropriate measures be taken to ensure that the requested documents are not destroyed.

Requester agrees to pay duplication fees and other costs determined in accordance with Section 601.702(f) of the regulations, in an amount not to exceed \$2,000. If such costs are anticipated to exceed that amount, it is requested that the undersigned be contacted for further authorization.

Please address the requested records to me at the address set forth above. If you have any questions concerning this request or require further identifying information,



FPL

Florida Power & Light Company, 801 Pennsylvania Avenue, N.W., Suite 220, Washington, D.C. 20004-2604
Telephone: (202) 347-7082, Fax: (202) 347-7076

please call me at (561) 691-7600. Thank you very much for your prompt and complete response to this request.

Sincerely yours,

A handwritten signature in cursive script that reads "James P. Higgins".

James P. Higgins
Vice President, Tax
FPL Group, Inc.

EXHIBIT 2



Florida Power & Light Company, 801 Pennsylvania Avenue, N.W., Suite 220, Washington, D.C. 20004-2804
Telephone: (202) 347-7882. Fax: (202) 347-7076

April 7, 2008

VIA COURIER AND CERTIFIED MAIL

National Office Reading Room
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC

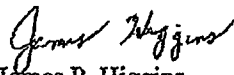
Dear Sir or Madam :

Pursuant to Section 6110 of the Internal Revenue Code, as amended, and the Regulations thereunder (e.g., § 301.6110-1(b)(1) and (c)(4)), the undersigned requests, on behalf of FPL Group, Inc. ("Requestor"), any and all "background file documents" (within the meaning of Section 6110(b)(2) of the Code and Regulations § 301.6110-2(g) related to the preparation and issuance of written determinations designated as PLR 199903030 and AM 2006-006, or other written determination (including Chief Counsel Advice (as defined in Section 6110(i)(1) and (2)) which relates to either of those written determinations, including, but not limited to, any emails or telephone conference notes made in connection with such written determination.

In accordance with Regulations § 301.6110-1(c)(4), the undersigned Requestor authorizes and agrees to pay your standard charges for searching and copying the documents requested herein, up to a maximum of \$500. It is further requested that you contact the undersigned officer of Requestor at the telephone number indicated for authorization of additional charges in excess of that amount.

Pursuant to Regulations § 301.6110-1(c)(4)(vii), you are requested to send the requested documents by regular mail to the undersigned at the address set forth above.

Sincerely yours,


James P. Higgins
Vice President, Tax
FPL Group, Inc.



Florida Power & Light Company, 801 Pennsylvania Avenue, N.W., Suite 220, Washington, D.C. 20004-2604
Telephone: (202) 347-7082, Fax: (202) 347-7076

April 8, 2008

VIA COURIER AND CERTIFIED MAIL

National Office Reading Room
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Dear Sir or Madam :

Pursuant to Section 6110 of the Internal Revenue Code, as amended, and the Regulations thereunder (e.g., § 301.6110-1(b)(1) and (c)(4)), the undersigned requests, on behalf of FPL Group, Inc. ("Requestor"), any and all documents constituting a "Chief Counsel Advice" (as defined in Section 6110(i)(1) and (2) and interpreted by the U.S. Court of Appeals for the District of Columbia Circuit) which relates to any direction by any IRS National Office component of the IRS Office of Chief Counsel with respect to the required treatment of items of cost as capitalized costs or deductible repairs for the consolidated returns of FPL Group, Inc., including, but not limited to, any emails or telephone conference notes made in connection with such written determination. This request, includes, but is not limited to, all materials described in the FOIA request filed on April 7, 2008 (an additional copy of which is attached hereto), and which are determined to be subject to Section 6110 of the Code rather than FOIA.

In accordance with Regulations § 301.6110-1(c)(4), the undersigned Requestor authorizes and agrees to pay your standard charges for searching and coping the documents requested herein, up to a maximum of \$500. It is further requested that you contact the undersigned officer of Requestor at the telephone number indicated for authorization of additional charges in excess of that amount.

Pursuant to Regulations § 301.6110-1(c)(4)(vii), you are requested to send the requested documents by regular mail to the undersigned at the address set forth above.

Sincerely yours,

A handwritten signature in cursive script that reads 'James P. Higgins'.

James P. Higgins
Vice President, Tax
FPL Group, Inc.

Enclosed

EXHIBIT C



Florida Power & Light Company, 801 Pennsylvania Avenue, N.W., Suite 220, Washington, D.C. 20004-2604
Telephone: (202) 347-7082, Fax: (202) 347-7076

April 7, 2008

IRS FOIA Request
Jacksonville Disclosure Office
MS 4030
400 W. Bay Street
Jacksonville, FL 32202-4437

National Office Reading Room
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

IRS FOIA Request
Chicago Disclosure Office
Mail Stop 7000 CHI, Room 2820
230 S. Dearborn Street
Chicago, IL 60604

IRS FOIA Request
Cincinnati Disclosure Office, RM 7019
550 Main Street
Cincinnati, OH 45202

Re: Freedom of Information Act Request—Files related to tax accounting method issues for repair expense vs. capitalization of FPL Group, Inc.

Dear Sir or Madam:

Pursuant to Section 552 of Title 5, U.S.C., and the regulations thereunder (Section 601.702, *et seq.*), the undersigned FPL Group, Inc., and its wholly-owned subsidiary Florida Power & Light, Inc. ("FPL"), request the production of copies of all records described below.

We believe that the records meeting the descriptions below will likely be located in the following offices or with these individuals who have worked on the issues related to FPL:

- The Industry Specialization Program group for the Utility Industry, located in Akron, Ohio. (Frank Genet, Utility Technical Advisor);
- The offices of Area Counsel and Associate Area Counsel, Chicago, Illinois (James Lanning and William Merkle);
- The offices of the District Counsel, Miami, Florida (Sergio Garcia-Pages);
- The offices of the District Counsel, Jacksonville, Florida (Ben DeLuna); and
- The offices of the Associate Chief Counsel (LMSB).
- The Internal Revenue Service National Office

Because the responsibility for controlling the records described may be within the purview of officials in Jacksonville, Chicago, and/or Akron, we are sending this FOIA

EXHIBIT D



Florida Power & Light Company, 801 Pennsylvania Avenue, N.W., Suite 220, Washington, D.C. 20004-2604
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FPL

request to each of the Disclosure Offices responsible for each particular area of the country in order to expedite this request. We expect that each recipient of the request will provide all responsive documents or records that are within his possession, custody, or control or to which he has a right to access. In addition, this list is intended to be helpful, but not exclusive. This request should be forwarded to any other persons or offices having relevant information that are known to any of the responders.

If this FOIA request is consolidated under the supervision of a particular Disclosure Office or Officer, please inform me so that coordination and communication may be simplified.

The term "documents" as used herein includes all written materials, including emails and summaries of telephone conversations, whether in paper or electronic format.

Requested Records under FOIA:

1. Documents related specifically to the reasons for, or factual considerations in connection with, the determination of Donald Williamson in determining not to allow FPL's protective request, dated April 10, 2001, for a change in method of accounting for items of repair expense. FPL submitted this protective request to Mr. Williamson in his capacity as Associate Area Counsel (Strategic Litigation), in Atlanta, Georgia, while he was in charge of the litigation of FPL's 1988-1992 taxable years. We believe these files may be currently in the possession of William Merkle or Larry Letkewicz of the office of Associate Area Counsel (Strategic Litigation) in Chicago, Illinois.
2. Any and all directives to Revenue Agents (whether direct or indirect) regarding the disallowance of deductions for repair expenses in excess of the amounts claimed for financial accounting purposes claimed on FPL's consolidated tax returns.
3. Any documents related to a final decision or basis for the final decision not to allow FPL's requested protective change in the method of accounting with respect to items of repair expense filed in 2001, including the background files supporting the decision.
4. The affidavits of Sara Northard and Donald Williamson, which may be in the possession of William Merkle, Associate Area Counsel, Chicago, Illinois (and/or Lawrence Letkewicz of the same office), along with any other files of factual background relating to the affidavits. Mr. Williamson describes and references the affidavits in a letter dated May 30, 2002. A copy of his letter is attached to this Request.
5. The statement of final decision and the background files supporting that decision with respect to the "Industry Issue Resolution" ("IIR") process for the repair



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Telephone: (202) 347-7082, Fax: (202) 347-7076

expense vs. capitalization issue (your ref: RR-108668-03), titled "Costs of Maintaining and Improving Power Generating Assets." This Request includes any studies or analyses performed by employees of the IRS or outside contractors on behalf of the IRS.

6. Any documents submitted by members of the electric utility industry participating in the IIR process on the repair expense vs. capitalization issue described above.
7. All documents and records related to the promulgation of Proposed Regulation 168745-03 (originally promulgated August 18, 2006 and published in the August 21, 2006 issue of the Federal Register (71 FR 161) and the September 25, 2006 issue of the Internal Revenue Bulletin (2006-39 I.R.B. 532); withdrawn and repromulgated as proposed regulations on March 7, 2008) regarding the capitalization of repair expense, including statements and background file documents as to why the use of "retirement units" (as defined by the Federal Energy Regulatory Commission) as a basis for determining deductible repair expenses in the utility industry will clearly reflect income.
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please call me at (561) 691-7600. Thank you very much for your prompt and complete response to this request.

Sincerely yours,

A handwritten signature in cursive script that reads "James Higgins".

James P. Higgins
Vice President, Tax
FPL Group, Inc.